HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL NO. 1062 OF 2006

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Between:

Dega Babi Reddy & others

..... Appellants

AND

The Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Revenue (Endowments) Department,
Hyderabad & others

.....Respondents

:: J U D G M E N T::

Counsel for the appellants : Shri V. Raja Gopal Reddy

Dated: 23.10.2006

Per G.S.SINGHVI, CJ

This appeal is directed against order dated 15.09.2006 passed by the learned Single Judge in Writ Petition No.19135 of 2006 whereby he refused to interfere with the auction of the lands belonging to Shri Rebala Kodanda Rami Reddy Charities, North Mopur Village, Allur Mandal, Nellore District (respondent No.3).

The appellants claim to be cultivating tenants of different parcels of land belonging to respondent No.3. Appellant No.1 is said to be cultivating land measuring Ac.4.40 cts. in Survey No. 95/2, appellant No.2 is said to be cultivating Ac.2.00 of land comprised in Survey No.4363, appellant No.3 is said to be cultivating Ac.1.71 cts. of land comprised in Survey No.294 and appellant No.4 is said to be cultivating land measuring Ac.8.23 cts. comprised in Survey Nos. 4359, 4361, 4362, 4363, 4364/A, 4365, 4366, 4367 of North Mopur Village, Allur Mandal, Nellore District. The appellants are said to have been paying maktha to respondent No.3 since 1980. They filed Writ Petition No.19135 of 2006 questioning the notice issued by the Executive Officer of respondent No.3 proposing auction of the leasehold rights in respect of different parcels of land including the land occupied by the appellants. In the affidavit filed by appellant No.1 – Dega Babi Reddy, it was averred that the proposed auction is contrary to the provisions of the Andhra Pradesh Charitable and Hindu Religious

Institutions and Endowments Act, 1987 (for short 'the Act') and the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (for short 'the Rules'). The deponent averred that, in their capacity as cultivating tenants, the petitioners are entitled to continue in possession of the parcels of land proposed to be auctioned and the notice for auction could not have been issued without cancelling their lease after complying with the rules of natural justice and Rule 5(1) of the Rules.

The leaned Single Judge dismissed the writ petition by observing that the petitioners have failed to substantiate their claim of being tenants of the land belonging to respondent No.3. In the opinion of the learned Single Judge, the petitioners (appellants herein) are unauthorisedly occupying the endowment lands and they have no right to resist the grant of lease by auction. In the opinion of the learned Single Judge, the status of the writ petitioners was nothing more than that of unauthorized occupants of the land belonging to the temple and, as such, they were not entitled to invoke Rule 5(1) of the 2003 Rules.

Shri V. Rajagopal Reddy, learned counsel for the appellants relied on the receipts issued by Executive Officer of respondent No.3 to show that some of the appellants have been paying maktha during those years. He also relied on the certificate issued by the Revenue Divisional Officer showing the appellants as landless poor and argued that his clients are entitled to determination of their status as such in terms of Rule 3(1) of the 2003 Rules and the learned Single Judge gravely erred by refusing

to entertain their prayer against the proposed auction of the land. Shri Reddy emphasized that absence of written lease deed cannot lead to an inference that the appellants are not cultivating tenants of the land belonging to respondent No.3. He then argued that respondent No.3 could not have initiated the process of auction without cancelling the lease of the appellants by following the procedure prescribed under Rule 5 of the Rules.

In our opinion, there is no merit in the submission of the learned counsel. Rule 3 of the 2003 Rules, on which reliance has been placed by the learned counsel, reads as under:

> " **Determination of Landless poor person:** - (1) Immediately after coming into force of these rules, if any cultivating tenant claims to be a landless poor person, the Assistant Commissioner having territorial jurisdiction shall enquire into and decide whether the cultivating tenant is a landless poor person as defined in Section 82 after giving a reasonable opportunity to the cultivating tenant and to the Executive Authority of the concerned institution or Endowment.
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> (2) If the cultivating tenant does not claim to be a landless poor person or if the Assistant Commissioner concerned determines that the cultivating tenant is not a landless poor person, the tenancy will be deemed to have been cancelled with effect from 28.05.1987 and the cultivating tenant shall be regarded as a tenant holding over thereafter."

A reading of the plain language of the above re-produced rule makes it clear that benefit of that rule can be claimed only by a cultivating tenant, who makes an application to the Assistant Commissioner by claiming himself to be a landless poor person.

The appellants have neither pleaded nor any material has been placed before the Court to show that all or any one of them ever made application under Rule 3 of the Rules. Therefore, the arguments of the learned counsel that his clients have been deprived of their legitimate right to be treated as cultivating tenant of the land cannot be accepted.

The appellants' claim that they are cultivating tenants of the land belonging to respondent No.3 is liable to be negatived because they have not produced any tangible evidence before the Court to show that the land occupied by them had been leased out by the temple authorities. The mere fact that some of them have deposited maktha for the period from 1996-97 to 2005-06 cannot lead to an inference that they are cultivating tenants of the land belonging to respondent No.3. In the affidavit filed by him, appellant No.1 has not disclosed the date on which leasehold rights were conferred upon either of the appellants by the competent authority of respondent No.3. Therefore, a bald statement contained in the writ petition or the memo of appeal cannot be made basis for recording a finding that the appellants are cultivating tenants of the land belonging to respondent No.3.

As a sequel to the above conclusions, it must be held that the action initiated by the competent authority for auction of the land belonging to respondent No.3 cannot be dubbed as illegal, arbitrary or vitiated due to violation of Rule 5(1) of the Rules. Rather, the said action is in consonance with the mandate of Section 80 of the Act which requires disposal of the land belonging

to the temple by way of auction.

For the reasons mentioned above, the appeal is dismissed.

At this stage, learned counsel for the appellants made a request that his clients may be given opportunity to file an application under Rule 3(1) of the 2003 Rules. In this context, it is sufficient to observe that dismissal of the writ petition and appeal filed by the appellants shall not operate as a bar to the filing of application by the appellants in terms of Rule 3(1) of the 2003 Rules.

As a sequel to dismissal of the main appeal, W.A.M.P.No.2255 of 2006 filed by the appellants for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

23.10.2006
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